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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 149.

HENRY H. BLEASE, APPELLANT,

vs.

ALBERT C. GARLINGTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED FEBRUARY 16, 1874.

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1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, A. D. 1873, before the honorable Hugh L. Bond and the honorable George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

ALBERT C. GARLINGTON, A CITIZEN OF THE State of Georgia,
vs.
HENRY H. BLEASE, A CITIZEN OF THE STATE of South Carolina.
} Bill to foreclose mortgage.

Be it remembered that heretofore, to wit, on the fourth Monday of November, in the year of our Lord one thousand eight hundred and seventy-three, the said Albert C. Garlington impleaded the said Henry H. Blease in a bill to foreclose mortgage, as follows:

Subpœna.

2 UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to Henry H. Blease, a citizen of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, within twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Albert C. Garlington, a citizen of Georgia.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed, in the registry of said court, your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court. Witness the honorable Salmon P. Chase, Chief-Justice of the United States of America, at
3 Charleston, in South Carolina, district aforesaid, the sixteenth day of May, in the year of our Lord one thousand eight hundred and seventy, and in the 94 year of the sovereignty and independence of the United States of America.

SUBER. BAXTER,
Complainant's Solicitor.

[SEAL.] DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

I accept the service of this process, 16th May, 1870.
HENRY H. BLEASE.

4 THE UNITED STATES OF AMERICA,
District of South Carolina:

In equity.

To the honorable the justices of the circuit court of the United States for the fourth circuit, and for the district of South Carolina, sitting in equity:

Humbly complaining, your orator Albert C. Garlington, a citizen of the State of Georgia, to your honors would respectfully shew:

That, heretofore, Henry H. Blease, a citizen of the State of South Carolina, became indebted to your orator in the sum of two thousand dollars, to secure the payment of which the said Henry H. Blease duly executed and delivered to your orator a note, under seal, dated the 20th day of April, A. D. 1869, for two thousand dollars, payable to your orator on or before the first day of January, A. D. 1870, without interest until that time; and the better and more fully to secure the payment of the said sum of two thousand dollars according to the tenor of said note, the said Henry H. Blease duly executed and delivered to your orator a mortgage of a tract of land, lying in Newberry County, in the State of South Carolina, containing nine hundred and thirty-one acres, more or less,
5 bounded by lands of James M. Baxter, John S. Hair, Jacob J. Paysinger, and others, lately owned by Robert Stewart, deceased, a copy of which mortgage and note is herewith filed and marked Exhibit A.

Your orator would further shew that the time fixed for the payment by Henry H. Blease to your orator of his indebtedness, secured by said note and mortgage as aforesaid, to wit, the first day of January last, has passed, but that the said Henry H. Blease has not only failed to pay off and discharge his said indebtedness or any part thereof to your orator, but positively and expressly refuses to pay the same, either in whole or in part, whereby your orator has suffered damage and great loss, unless full justice may be done in the premises by this honorable court, where alone full and adequate relief can be obtained.

In tender consideration whereof, and to the end that Albert C. Garlington may have the indebtedness of the said Henry H. Blease to him, as set forth in this bill, ascertained and sanctioned by the decree of this honorable court, and that Henry H. Blease may be forever of his equity of redemption in the tract of land described in the bill, and that the said land may be sold under the order of this
6 honorable court, by which the proceeds of said sale shall be applied to the satisfaction of said decree, and that your orator, the said Albert C. Garlington, may have such other and further relief in the premises as to your honor may seem meet, consistently with equity and good conscience, your orator prays for the writ of subpœna ad respondendum of this honorable court, to be directed to the said Henry H. Blease, commanding him to answer this bill, according to law and the practice of this honorable court, and your orator will ever pray, &c.

SUBER. BAXTER,
Plff.'s Sols.

Copy note and agreement.

$2,000. On or before the first day of January next, I promise to pay Albert C. Garlington, admr. of J. M. Young, decd., or order, two thou-

sand dollars, for value received. Witness my hand and seal 20 April, 1869.

HENRY H. BLEASE. [L. S.]

Wit:
JAMES M. BAXTER.

I agree to secure the payment of the foregoing note by mortgage on the lands purchased at the U. S. marshal's sale of the real estate of Robert Stewart, so soon as I receive a title therefor.

7 Witness my hand and seal, 20 April, 1869.

HENRY H. BLEASE. [L. S.]

Witness:
JAMES M. BAXTER.

Mortgage.

THE STATE OF SOUTH CAROLINA:

This indenture, made the twenty-third day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between Henry H. Blease of the one part, and Albert C. Garlington, administrator of the estate of James M. Young, decd., of the other part, witnesseth:

Whereas the said Henry H. Blease is indebted to the said Albert C. Garlington, administrator as aforesaid, in the sum of two thousand dollars, payable on or before the first day of January next, without interest until that time, secured by the sealed note of the said Henry H. Blease, payable on or before the first day of January next, without interest as aforesaid, bearing date the twentieth day of April, eighteen hundred and sixty-nine:

Now this indenture witnesseth, that the said Henry H. Blease, for and in consideration of the indebtedness aforesaid, and to more per-

8 fectly secure the payment thereof according to the tenor of said note, and in compliance with an agreement made between the said Henry H. Blease and Albert C. Garlington at the time of the execution and delivery of said note, looking to the full security of its payment, and also in consideration of the sum of one dollar to the said Henry H. Blease, by him, the said Albert C. Garlington, in hand paid, at and before the sealing and delivery of these presents, do grant, bargain, sell, alien, release, convey, and confirm unto the said Albert C. Garlington, administrator as aforesaid, and to his heirs and assigns forever, all that tract or plantation of land lying and being in the county of Newberry, containing nine hundred and thirty-one acres, more or less, bounded by lands of James M. Baxter, John S. Hair, Jacob J. Paysinger, and others, lately owned by Robert Stewart, together with all and singular the rights, members, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; to have and to hold the said plantation, with the appurtenances, unto the said Albert C. Garlington, administrator, as aforesaid, his

9 heirs and assigns, forever: Provided always nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said Henry H. Blease, his heirs, executors, or administrators, shall well and truly pay or cause to be paid unto the said Albert C. Garlington, administrator, as aforesaid, the sum of two thousand dollars, according to the tenor of the sealed note above mentioned, then and from thenceforth these presents shall be utterly null and void, any-

thing herein contained to the contrary thereof, if any, notwithstanding; and it is covenanted and agreed upon, by and between the parties to these presents, that until default shall be made in payment of the aforesaid sum as before set forth, and the interest for the same, it shall and may be lawful, to and for the said Henry H. Blease, peaceably and quietly to hold, use, occupy, possess, and enjoy all and singular the premises above granted and released, and every part thereof, with the appurtenances, and to have and receive, and take the rents, issues, and profits thereof to his own particular use and behoof, anything herein contained to the contrary hereof in any wise notwithstanding.

10 In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

HENRY H. BLEASE. [L. S.]
A. C. GARLINGTON. [L. S.]

Signed, sealed, and delivered in the presence of—
SAMUEL FURMAN.
JAMES M. BAXTER.

And on the seventh day of May, A. D. 1870, came into court the said A. C. Garlington by Suber & Baxter, his solicitors, and filed the said bill of complaint.

And on the thirteenth day of May, A. D. 1870, came into court the said A. C. Garlington by Suber & Baxter, his solicitors, and moved the court for the following order, which order was duly granted, and order in words and of the tenor following:

In the U. S. court, S. C.

ALBERT C. GARLINGTON
vs.
HENRY H. BLEASE.

On motion of Mes'rs Suber & Baxter, sols.:
Ordered that the plaintiff have leave to amend his bill in the above-stated case by setting forth in the prayer thereof such interrogatories to be answered by the defendant as the plaintiff may be advised.

GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.

13TH MAY, 1870.

11 And on the thirteenth day of May, A. D. 1870, came into court the said A. C. Garlington, by Suber & Baxter, his solicitors, and having obtained the foregoing order, filed the following amended bill, in words and of the tenor following:

In U. S. circuit court, S. C.

ALBERT C. GARLINGTON
vs.
HENRY H. BLEASE. } Amended bill.

The plaintiff, Albert C. Garlington, by leave of the court first obtained, by way of amended bill in the above-stated case, in addition to the prayer in the original bill contained, prays that the following inter-

rogatories may be taken as a part thereof, and the defendant, Henry H. Blease, required to answer the same in like manner as if said interrogatories had been embraced in the original bill, to wit: Is Albert C. Garlington a citizen of Georgia, and where does he now reside?

Are you a citizen of South Carolina, and where do you reside? Was Albert C. Garlington, the plaintiff, a citizen of Georgia at the commencement of this suit, and where did he then reside? Were you a citizen of South Carolina at the commencement of this suit, and where did you then reside? Did you sign the note and agreement
12 in reference to the manner in which said note was to be secured, and the mortgage given to secure the payment of said note, copies of which note, agreement, and mortgage are exhibited with the original bill as Exhibit A, and substantially set forth in said original bill?

And the plaintiff will ever pray, &c.

SUBER. BAXTER, *Sols.*

And on the sixteenth day of February, 1872, came into court the said Henry H. Blease, defendant, by Jones & Jones, his solicitors, to the bill of complaint of said complainant filed his answer in words and of the tenor following:

Answer to defendant.

UNITED STATES OF AMERICA,
District of South Carolina:

A. C. GARLINGTON
vs.
H. H. BLEASE. } In equity. Bill for foreclosure of mortgage.

The answer of Henry H. Blease, to the bill of complaint exhibited against him in this honorable court in the above stated case.

This defendant, saving and reserving, &c., for answer to the said
13 bill of complaint, or to so much thereof as he is advised it is material for him to answer, answering says: He admits that he is now, and was at the time this suit was instituted, a citizen of South Carolina; that the complainant was a citizen of South Carolina at the time the note and mortgage described in the bill were executed, but before the institution of this suit left South Carolina, and, this respondent has heard, is now residing at Atlanta, Georgia; that he executed and delivered to the complainant a note and mortgage, and supposes and is willing to admit that Exhibit A, filed with the bill, contains true copies thereof; that the said note and mortgage are past due, and that he has refused to pay the same, because the complainant deceived him as to the value of the consideration of the said note and mortgage, and has not complied with his positive agreement. The history of this transaction is as follows: The complainant, as the administrator of J. M. Young, decd., held a large claim against the estate of John B. O'Neall, decd., who had been the guardian of the said J. M. Young, and Robert Stuart and H. H. Kinard were the sur'ties on his bond. The
14 compl. had commenced suit on said bond against Robert Stuart, and proceeding to force him into bankruptcy, and his life seemed to be endangered by the excitement which this last proceeding produced, he being naturally in very feeble health. Under these circumstances,

negotiations were commenced between the compl. and this respondent, the friend of the said R. Stuart, in regard to the sale of the claim of the said compl. against the said Robert Stuart, as surety on the said guardianship-bond of said J. B. O'Neall, deceased, and this respondent was induced to purchase said claim at six thousand dollars, (four thousand dollars of which was paid in cash, and the note described in bill given for $2,000,) by the assurance of the complainant that said claim was worth at least six thousand dollars, and he made some calculations to show this, and said, as this claim was worth six thousand dollars, it would not be right for him to take less than that sum, and that he would not do it. This purchase was made upon the further assurance and undertaking of the compl. that he would obtain judgment to this respondent. This defendant avers that said purchase would not have been made by him at that price, but for the said assurance and
15 promise of the compl. in which this respondent put implicit confidence. This respondent, further answering, states, that the said Robert Stuart died before judgment was obtained in said claim, and this respondent has been informed and believes that his estate is so utterly insolvent, that it will not pay anything like the sum of six thousand dollars on said claim, and he asks that this case be not tried until the true condition of said estate can be ascertained. This defendant further submits to this honorable court that, the compl. having deceived this defendant as to the value of said claim against Robt. Stuart, and not having complied with his part of the contract, to obtain judgment on said claim, is not entitled to enforce collection of said note and mortgage in this court, where equity is administered, and asked that the whole contract may be set aside, and the compl. required to deliver up to this defendant the said note and mortgage, to be cancelled, and to refund the four thousand dollars paid in cash to him on said contract, with interest. This defendant, having answered the bill
16 in this case as fully as he is advised it is material for him to answer, prays hence to be dismissed, with his reasonable costs and charges, &c.

JONES & JONES,
Deft's Attorneys.

You swear that the statement and obligations contained in this your answer are true, as far as they relate to your own acts and duty, and that you believe them to be true, as far as they relate to the acts and deeds of others: So help you God.

HENRY H. BLEASE.

Sworn to before me the 12th July, 1870.

THED. M. LUKE,
C. C. P. N. C.

And at the November term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, on the fourth Monday of November, 1873, came into court the said parties, complainant and defendant, and thereupon the said court proceeded to a trial of the issues involved.

The complainant submitted his bill and amended bill of complaint, together with his mortgage from the defendant to the plaintiff. The defendant also submitted his answer.

17 And at the close of the complainant's testimony, the defendant, Henry H. Blease, was sworn as a witness on his own behalf.

It was proposed by his attorneys, Jones & Jones, *the* prove by him, the defendant, the following facts, in the words as follows:

In the circuit court of the Untted States, district of So. Ca., November term, 1873.

A. C. GARLINGTON, ADM'R,
vs.
HENRY H. BLEASE.

The defendant, H. H. Blease, proposes to prove in this case:

1. That one of the conditions of the original agreement for the sale of the liability of Robert Stewart, as one of the sureties on the bond of J. B. O'Neall, as guardian of J. M. Young, plff., intestate to the defendant, was that the plff. should obtain judg't against the said R. Stewart, and that when the agreement was drawn up and presented to the deft. he called attention of plff. to the fact that that part of the agreement which obligated him to get judgment had been left out, and insisted that it should be inserted, and he was assured that that condition should be carried out, and that it was not necessary to rewrite the agreement for the purpose of putting it in.

18 2. That during the negotiations for the sale of the aforesaid liability of R. Stewart, the plaintiff represented to the deft. that said liability or claim was worth at least six thousand dollars, and that in fact it is not worth twenty-five hundred dollars.

3. That the deft. did not know the then financial condition of R. Stewart, and put implicit confidence in the premises and representations of the plaintiff, and would not have made the trade but for such assurance.

9 Dec., 1873.

JONES & JONES,
Deft's Att'y.

Whereupon the court refused to allow the defendant to testify as to the above facts.

Whereupon the said court, on motion of the complainant' solicitors, Suber & Baxter, made the following order:

THE UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court.

ALBERT C. GARLINGTON, PLAINTIFF,
against
HENRY H. BLEASE, DEFENDANT.
Bill to foreclose mortgage.

19 *Order of reference.*

Ordered, on motion of Mr. Baxter, atty. for the plaintiff, without prejudice to the defendant, that it be referred to James E. Hagood, esqr., the clerk of this court, as master pro hac vice, to ascertain and report the amount due on the note secured by the mortgage herein sought to be foreclosed, up to the 10th day of December, 1873.

16 Dec., 1873.

HUGH L. BOND,
Ct. Judge.

negotiations were commenced between the compl. and this respondent, the friend of the said R. Stuart, in regard to the sale of the claim of the said compl. against the said Robert Stuart, as surety on the said guardianship-bond of said J. B. O'Neall, deceased, and this respondent was induced to purchase said claim at six thousand dollars, (four thousand dollars of which was paid in cash, and the note described in bill given for $2,000,) by the assurance of the complainant that said claim was worth at least six thousand dollars, and he made some calculations to show this, and said, as this claim was worth six thousand dollars, it would not be right for him to take less than that sum, and that he would not do it. This purchase was made upon the further assurance and undertaking of the compl. that he would obtain judgment to this respondent. This defendant avers that said purchase would not have been made by him at that price, but for the said assurance and
15 promise of the compl. in which this respondent put implicit confidence. This respondent, further answering, states, that the said Robert Stuart died before judgment was obtained in said claim, and this respondent has been informed and believes that his estate is so utterly insolvent, that it will not pay anything like the sum of six thousand dollars on said claim, and he asks that this case be not tried until the true condition of said estate can be ascertained. This defendant further submits to this honorable court that, the compl. having deceived this defendant as to the value of said claim against Robt. Stuart, and not having complied with his part of the contract, to obtain judgment on said claim, is not entitled to enforce collection of said note and mortgage in this court, where equity is administered, and asked that the whole contract may be set aside, and the compl. required to deliver up to this defendant the said note and mortgage, to be cancelled, and to refund the four thousand dollars paid in cash to him on said contract, with interest. This defendant, having answered the bill
16 in this case as fully as he is advised it is material for him to answer, prays hence to be dismissed, with his reasonable costs and charges, &c.

JONES & JONES,
Deft's Attorneys.

You swear that the statement and obligations contained in this your answer are true, as far as they relate to your own acts and duty, and that you believe them to be true, as far as they relate to the acts and deeds of others: So help you God.

HENRY H. BLEASE.

Sworn to before me the 12th July, 1870.

THED. M. LUKE,
C. C. P. N. C.

And at the November term of the circuit court of the United States for the district of South Carolina, begun and holden at Columbia, on the fourth Monday of November, 1873, came into court the said parties, complainant and defendant, and thereupon the said court proceeded to a trial of the issues involved.

The complainant submitted his bill and amended bill of complaint, together with his mortgage from the defendant to the plaintiff. The defendant also submitted his answer.

17 And at the close of the complainant's testimony, the defendant, Henry H. Blease, was sworn as a witness on his own behalf.

It was proposed by his attorneys, Jones & Jones, *the* prove by him, the defendant, the following facts, in the words as follows:

In the circuit court of the Untted States, district of So. Ca., November term, 1873.

A. C. GARLINGTON, ADM'R,
vs.
HENRY H. BLEASE.

The defendant, H. H. Blease, proposes to prove in this case:

1. That one of the conditions of the original agreement for the sale of the liability of Robert Stewart, as one of the sureties on the bond of J. B. O'Neall, as guardian of J. M. Young, plff., intestate to the defendant, was that the plff. should obtain judg't against the said R. Stewart, and that when the agreement was drawn up and presented to the deft. he called attention of plff. to the fact that that part of the agreement which obligated him to get judgment had been left out, and insisted that it should be inserted, and he was assured that that condition should be carried out, and that it was not necessary to rewrite the agreement for the purpose of putting it in.

18 2. That during the negotiations for the sale of the aforesaid liability of R. Stewart, the plaintiff represented to the deft. that said liability or claim was worth at least six thousand dollars, and that in fact it is not worth twenty-five hundred dollars.

3. That the deft. did not know the then financial condition of R. Stewart, and put implicit confidence in the premises and representations of the plaintiff, and would not have made the trade but for such assurance.

9 Dec., 1873.

JONES & JONES,
Deft's Att'y.

Whereupon the court refused to allow the defendant to testify as to the above facts.

Whereupon the said court, on motion of the complainant' solicitors, Suber & Baxter, made the following order:

THE UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court.

ALBERT C. GARLINGTON, PLAINTIFF,
against
HENRY H. BLEASE, DEFENDANT. } Bill to foreclose mortgage.

19 *Order of reference.*

Ordered, on motion of Mr. Baxter, atty. for the plaintiff, without prejudice to the defendant, that it be referred to James E. Hagood, esqr., the clerk of this court, as master pro hac vice, to ascertain and report the amount due on the note secured by the mortgage herein sought to be foreclosed, up to the 10th day of December, 1873.

16 Dec., 1873.

HUGH L. BOND,
Ct. Judge.

Whereupon the said clerk and master of this court made the following report:

THE UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court.

ALBERT C. GARLINGTON, ADM'R, PLAINTIFF, *against* HENRY H. BLEASE, DFFENDANT. } Bill to foreclose mortgage.

Report of master.

20 The following report is respectfully submitted, under the order in this case, dated 16 December, 1873, requiring the undersigned "as master pro hoc vice to ascertain and report the amount due on the note secured by the mortgage herein sought to be foreclosed."

I. That the undersigned finds, as matter of fact, that the principal and interest due on said note on the 10th day of December, 1873, was twenty-five hundred and twenty-eight ($2,528.80) dollars 80 cents.

16th December, 1873.

Respectfully submitted.

J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

After argument by J. M. Baxter, for complainant, and by Jones & Jones, for defendant, and written argument, submitted by Hon. A. G. Magrath, of counsel for defendant.

Whereupon the court, on motion of the complainant' solicitors, Suber & Baxter, made the following decree:

THE UNITED STATES OF AMERICA,
District of South Carolina:

In the circuit court, 4th circuit.

ALBERT C. GARLINGTON, ADMR., PLAINTIFF, *against* HENRY H. BLEASE, DEFENDANT. } Bill to foreclose mortgage.

21 On hearing the report of James E. Hagood, esqr., master pro hac vice, in this case, all issues involved having been previously argued by counsel, both for the plaintiff and the defendant, it is ordered and adjudged that the plaintiff have a decree for twenty-five hundred and twenty-eight (2,528.80) dollars eighty cents with the interest at seven per centum per annum from the 10th day of December, 1873, with the cost of this suit.

It is further ordered and adjudged that the defendant be forever foreclosed of his equity of redemption in the land described in the pleadings, and that said land shall be sold by the marshal of this court at Newberry, in Newberry County, in the State of South Carolina, on the first Monday in March next, at twelve o'clock meridian, for cash, and the nett proceeds of that sale shall be applied to the satisfaction of the decree herein rendered in favor of the plaintiff against the defendant, all costs having been first paid therefrom, unless the defendant or some one on

his behalf shall fully satisfy the said decree, with all costs, on or before the time fixed in this order for said sale.

Dec. 19, 1873.

HUGH L. BOND,
Ct. Judge.

22 And at the said November term, 1873, came into court the said Henry H. Blease, by Jones & Jones, his solicitors, and then and there prayed that an appeal be granted him from the said decree rendered as aforesaid, which order was granted in the following words and of the tenor following:

In the circuit court, in equity.

A. C. GARLINGTON, ADMR.,
vs.
H. H. BLEASE.

On motion of Jones & Jones it is ordered that an appeal be allowed from the decree in this cause.

Dec. 19, 1873.

HUGH L. BOND,
Ct. Judge.

And on the twentieth day of December, 1873, came into court the said Henry H. Blease, appellant, by Jones & Jones, his solicitors, and the Hon. A. G. Magrath, of counsel, and filed the following assignment of error in this case against A. C. Garlington, admr., appellee, in the words following:

In the Supreme Court of the United States.

H. H. BLEASE, APPELLANT,
vs.
A. C. GARLINGTON, ADMR., APPELLEE.

23 And now comes the said appellant and says there is manifest error in the decree rendered in the circuit court of the United States for the district of South Carolina, in the cause there tried between the said appellee as complainant and the said appellee vs. defendant, and he now here sets forth and shews to the court the following errors therein:

First. That the said circuit court erred in refusing to permit the appellant to prove by parol an essential part of his contract with the appellee, which is the subject of this suit.

Second. That the said circuit court erred in refusing to permit such proof notwithstanding that the appellant offered to prove that it was by the appellee's fraud that he omitted from the written contract the said part of their contract.

Third. That the said circuit court erred in refusing to allow the appellant to prove that he was led into the contract, the subject of this suit, by the fraudulent misrepresentation of the appellee.

Fourth. That the said circuit court erred in rendering a decree of foreclosure and for costs.

24 Wherefore the appellant prays that the said decree may be reversed and set aside, and that he be allowed to make proof of the

matters included by the said circuit court, and that he be allowed his reasonable costs.

JONES & JONES,
Appellant's Solicitors.
A. G. MAGRATH,
Of Counsel.

And on the twentieth day of December, 1873, came into court the appellant, Henry H. Blease, and by his attorneys, Jones & Jones, and the Hon. A. G. Magrath, of counsel, and obtained the following citation to appeal, upon decree thereon, which citation *are* in words and of the tenor following:

Circuit court of the United States, district of South Carolina, fourth circuit, in equity.

ALBERT C. GARLINGTON
vs.
HENRY H. BLEASE. } Bill to foreclose mortgage.

Citation to appeal, upon decree thereon.

To Albert C. Garlington, greeting:

You are hereby cited and admonished to be and appear at the
25 Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to an order of appeal filed in the circuit court of the United States for the district of South Carolina, wherein Henry H. Blease is appellant and you are appellee, to shew cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand this twentieth day of December, A. D. 1873.

GEO. S. BRYAN,
U. S. Judge Dist. So. Ca.

And R. M. Wallace, marshal of the United States, returns said citation, endorsed as follows:

NEWBERRY, So. Ca., 25 *Dec.*, 1873.

I certify that I executed the within process by delivering a copy thereof to James M. Baxter, attorney for A. C. Garlington, at Newberry, South Carolina, on the twenty-fourth (24) day of December, 1873.

A. P. PIFER,
Special Dep. U. S. M.

26 And on the 29th day of December, 1873, came into court Henry H. Blease, the appellant in this case, and filed his appeal-bond in words and of the tenor following:

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

In the circuit court, in equity.

A. C. GARLINGTON, ADMINISTRATOR,
vs.
H. H. BLEASE. }

Know all men by these presents that we, Henry H. Blease and Geo.

W. Pearson and Edward H. Christian, are held and firmly bound unto Albert C. Garlington, administrator, in the full and just sum of one thousand dollars, to be paid to the said Albert C. Garlington, administrator, his certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly, by these presents, sealed with our seals and dated at Columbia this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy-three, and in the ninety-eighth year of the sovereignty
27 and independence of the United States of America.

Whereas lately, at a circuit court of the United States held at Columbia, South Carolina, a decree was rendered for the complainant in a suit wherein Albert C. Garlington, administrator, was complainant and Henry H. Blease was defendant, and the said defendant prayed leave to appeal from the said decree, and such appeal was by the said court allowed, and a citation was duly directed to the said complainant, citing and admonishing him to be and appear before and at the Supreme Court of the United States, to be held at Washington on the second Monday of October next:

Now, the condition of the above-written obligation is such, that if the said Henry H. Blease shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his plea good, and interest and just damages for delay, then the above-written obligation to be void and of none effect; else to remain in full force and virtue.

HENRY A. BLEASE. [L. S.]
GEO. W. PEARSON. [L. S.]
EDW. H. CHRISTIAN. [L. S.]

Sealed and delivered in the presence of—
PAT. H. DUCKETT.

28 STATE OF SOUTH CAROLINA,
County of Newberry:

On this the 25th day of December, 1873, before me, came Patrick H. Duckett, of said county and State, the subscribing witness to the within undertaking, with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resides in Newberry, South Carolina; that he knew Henry H. Blease, George W. Pearson, and Edward H. Christian, the person described in and who executed the above undertaking; that he, the said Patrick H. Duckett, subscribed his name as witness thereto, and that he believes the said parties jointly to be worth at least twenty thousand dollars.

PAT. H. DUCKETT.

Sworn to before me this 25th Dec., 1873.

[SEAL.] O. T. SCHUMPERT, [L. S.]
N. P. S. C., Notary Public, South Carolina.

STATE OF SOUTH CAROLINA,
County of Newberry:

I, L. J. Jones, of said county and State, do hereby certify that I am personally acquainted with the signers of the within bond; that

29 they live in the same town with me, and that I believe them to be worth ten times the amount mentioned in said bond.

L. J. JONES.

Approved.

GEO. S. BRYAN,
U. S. Judge, Dist. So. Ca.
25th Dec., 1873.

THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In circuit court.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the record and proceedings of the decree in the case of Albert C. Garlington, complainant, against Henry H. Blease, defendant, rendered as aforesaid, together with all things relating to the same.

Given under my hand and seal of the said court, at clerk's office in the city of Charleston, for the district aforesaid, on this the thirteenth day of February, A. D. 1874.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

(Indorsement on cover:) No. 149. Henry H. Blease, appellant, *vs.* Albert C. Garlington. So. Carolina C. C. U. S. Filed 16th February, 1874.

Supreme Court of the United States.

HENRY H. BLEASE, Appellant,
vs.
ALBERT C. GARLINGTON, Appellee.
No. 149.

APPEAL FROM THE CIRCUIT COURT FOR THE DISTRICT OF SOUTH CAROLINA.

STATEMENT OF FACTS.

Garlington, the appellee, filed his bill to foreclose a mortgage given him by Blease, the appellant, securing Blease's note to him for $2,000. In his answer, Blease gives this account of the creation of these securities, viz: that Garlington held a claim against one Robert Stewart, as surety on the bond of J. B. O'Neall, as guardian of Young, and had instituted suit against Stewart, and was about to force him into bankruptcy. Stewart was in feeble health, and these proceedings endangered his life, and thereupon he, Blease, for the relief of Stewart, bought from Garlington his claim for $6,000, paying $4,000 in cash, and giving for the balance the note and mortgage the subject of this suit.

At the trial Blease, the appellant, proposed to prove, (fol. 17:)

I. That one of the conditions of the original agreement for the sale of the liability of Robert Stewart, as one of the sureties on the bond of J. B. O'Neall, as guardian of J. M.

Young, plaintiff's intestate, to the defendant, was that the plaintiff should obtain judgment against the said R. Stewart, and that when the agreement was drawn up and presented to the defendant he called attention of plaintiff to the fact that that part of the agreement which obligated him to get judgment had been left out, and insisted that it should be inserted, and he was assured that that condition should be carried out, and that it was not necessary to rewrite the agreement for the purpose of putting it in.

II. That during the negotiations for the sale of the aforesaid liability of R. Stewart, the plaintiff represented to the defendant that said liability or claim was worth at least $6,000, and that in fact it is not worth $2,500.

III. That the defendant did not know the then financial condition of R. Stewart, and put implicit confidence in the promises and representations of the plaintiff, and would not have made the trade but for such assurance.

The court refused to allow the defendant to testify as to the above facts, and the usual decree against him was made.

Assignment of Errors.

And the appellant now comes and shows to the court the following errors in the decree.

I.

That the court erred in refusing to permit the defendant to prove by parol that the appellee undertook to obtain judgment against Stewart as a condition of the appellant's liability to him, the appellee.

II.

That the court erred in refusing to permit the appellant to prove that the omission of this condition from the written agreement had been caused by the act and representations and statements of the appellant to him.

III.

That the court erred in refusing to permit the appellant to prove the representations of the appellee as to the value of his claim, the appellant's reliance thereon, and the real value thereof.

JAMES LOWNDES,
Appellant's Attorney.

BRIEF OF ARGUMENT.

I.

This evidence could have been excluded only because, 1st. It was irrelevant. 2d. That it was altering a written contract by parol evidence.

1st. It was clearly not irrelevant.

What Garlington agreed to do was evidently an important part of the consideration.

But whether or not it was important, it was a part of and a condition of the agreement, and Blease was entitled to have it performed.

2d. The rule as to parol evidence is, that it cannot be used to contradict or vary a written instrument.

The appellant does not seek to do either, but to prove a collateral contemporaneous part of the agreement. It is clear on the authorities that he may do so.

"Where the agreement between the parties is one and entire, and only a part of this is reduced to writing, it would seem that the residue may be proved by extrinsic evidence."

Parsons on Contracts, II, 553.

"Nor does the rule (as against parol evidence) apply in cases where the original contract was verbal and entire, and a part only of it was reduced to writing."

Greenleaf Ev., I, § 284.

The cases to this point are numerous; it is necessary to quote only,

Wallace *v.* Littell, 11 C. B. N. S., 369.
Lapham *v.* Whipple, 8 Meb., 59.
Jeffrey *v.* Walton, 1 Starkie, 267.

"We seem now to have settled down to this, whatever material to the contract was expressed and agreed to when the bargain was concluded and the article drawn, may, if not expressed in the article, be proved by parol."

Ballenger *v.* Eckert, 16 Serg. and Rawle, 424.

II.

The omission was not merely collateral; *it was caused by the act of the appellee.*

It is a fraud in law upon the appellant now to enforce the written agreement without regard to the parol condition when the appellee, by his act, kept it out of the written agreement.

"What shall be said when those terms are suppressed or omitted, (from a written agreement,) by fraud or imposition, shall the guilty party be allowed to avail himself of such a triumph? * * * This would be to allow a rule introduced to suppress fraud to be the most effectual promoter and encouragement of it. Hence courts of equity have never hesitated," &c., &c.

Story Eq. Juris., I, § 154.

An omission in a written agreement, whether it happen by fraud or mistake, may be proved by parol.

Joynes *v.* Statham, 3 Atkyns, 388.
Ramsbottom *v.* Godsden, 1 V. & B., 168.
Winch *v.* Winchester, 1 V. & B., 378.

But whether the relief be granted on the ground of fraud, of mistake, or of estoppel, it is inequitable to permit the appellee to take advantage of his own wrong by excluding evidence of the parol agreement.

III.

The appellant, in his answer, alleged that the appellee *deceived* him in regard to the value of the claim against Stewart. On the trial he proposed to show that the appellee had represented to him that it was worth at least $6,000, and that in fact it is not worth $2,500.

1st. It is in law fraud to represent as a fact what one knows not to be a fact, or to represent as a fact what one does not know to be a fact. One of these two things it was proposed to show by the rejected testimony that the appellee did.

The averment is that he made a positive representation; not that he barely expressed an opinion; and that the representation proved not to be founded in fact. *Prima facie*, by the evidence offered, a case would have been made out against him of representing that as a fact which he did not know to be a fact.

2d. But of late the courts have laid down a rule as to representations, which does not go upon the ground of fraud, active or constructive, but of estoppel.

"If you make a representation with the intention that it shall be acted upon by upon another, and he does so, you are estopped from denying the truth of what you represented as a fact."

In re Bahia and San Francisco Railway Co., L. R., III, Q. B., 595.

"When a person has made a statement similar to the present, he is precluded, as against another person who has *bona fide* acted upon it, from denying the truth of the statement."

Per Blackburn, J., in Webb *v.* Commissioners, L. R., 5, Q. B., 653.

The testimony offered went to show that the representation in question was made with the intention that the appellant should act upon it; that he did rely upon it, and that he acted upon it.

Upon either of the principles above indicated this evidence was improperly excluded.

JAMES LOWNDES,
Appellant's Attorney.

Supreme Court of the United States.

OCTOBER TERM, 1875.

HENRY H. BLEASE, Appellant,
vs.
ALBERT C. GARLINGTON, Appellee.
No. 149.

APPELLEE'S BRIEF.

The only question in this case is, whether the court below erred in refusing to allow the defendant below, Blease, to prove the following facts:

"1. That one of the conditions of the original agreement for the sale of the liability of Robert Stewart, as one of the sureties of the bond of J. B. O'Neall, as guardian of J. M. Young, plaintiff's intestate, to the defendant, was that the plaintiff should obtain judgment against the said R. Stewart, and that, when the agreement was drawn up and presented to the defendant, he called attention of plaintiff to the fact that that part of the agreement which obligated him to get judgment had been left out, and insisted that it should be inserted, and he was assured that that condition should be carried out, and that it was not necessary to rewrite the agreement for the purpose of putting it in.

"2. That during the negotiations for the sale of the aforesaid liability of R. Stewart, the plaintiff represented to the defendant that said liability or claim was worth at least six thousand dollars, whereas *it is not worth* twenty-five hundred dollars.

"3. That the defendant did not know the then financial condition of R. Stewart, and put implicit confidence in the promises and representations of the plaintiff, and would not have made the trade but for such assurance." (Transcript, p. 7.)

Copy of the note, agreement, and mortgage is found in the transcript, pp. 2, 3, and 4.

The note and agreement are in the words following:

"[$2,000.]

"On or before the first day of January next I promise to pay Albert C. Garlington, adm'r of J. M. Young, dec'd, or order, two thousand dollars, for value received.

"Witness my hand and seal, 20 April, 1869.

"HENRY H. BLEASE. [L. S.]

"Witness: JAMES M. BAXTER."

"I agree to secure the payment of the foregoing note by mortgage on the lands purchased at the United States marshal's sale of the real estate of Robert Stewart, as soon as I receive a title therefor.

"Witness my hand and seal, 20 April, 1869.

HENRY H. BLEASE. [L. S.]

"Witness: JAMES M. BAXTER."

The mortgage executed April 22, 1869, recites the indebtedness of Blease to Garlington, administrator, in the sum of $2,000, secured by sealed note dated April 20, 1869, and due January 1, 1870; and states, as the consideration of the mortgage, "that the said Blease, for and in consideration of the indebtedness aforesaid, and to more perfectly secure the payment thereof, according to the tenor of said note, and in compliance with an agreement made between said Henry H. Blease and Albert C. Garlington at the time of the execution and delivery of said note, looking to the full security of its payment," "and the further consideration of one dollar." It is further provided in the mortgage that the mortgage shall be void if Blease should pay the $2,000 according to the tenor of the said sealed note; and it is further "covenanted and agreed that, until default by Blease in the payment of the said $2,000 and interest, the said Blease should occupy and enjoy the mortgaged property.

The bill filed by Garlington was an ordinary bill for foreclosure of the mortgage, and praying a sale of the land

embraced in the mortgage to pay the sealed note and interest thereon. (Transcript, p. 4.)

1. As to the offer to prove that part of the alleged agreement which obligated the plaintiff below to get judgment.

This proposed parol evidence was intended to vary the written instruments executed by the contracting parties, by adding a new condition. As such it is clearly inadmissible.

The rule that parol evidence is inadmissible to contradict or substantially vary the legal import of a written agreement, is the same in courts of law and in equity.

Stevens *v.* Cooper, 1 Johns. Ch. R., p. 425.

Where an agreement is reduced to writing all previous negotiations resting in parol are extinguished by the written contract, and cannot be resorted to to help out or explain its meaning.

Parkhurst *v.* Cortland, 1 Johns. Ch. R., p. 273.

Parol evidence is inadmissible to support an agreement set up in contradiction to a deed.

Movan and Wife *v.* Hays, 1 Johns. Ch. R., p. 339.

Where a deed has been executed pursuant to a written agreement between the parties, parol evidence is inadmissible to show a resulting trust.

St. John *v.* Benedict, 4 Johns. Ch. R., p. 3.

See also King *v.* Baldwin, 2 Johns. Ch. R., 557.

The conversation which preceded the agreement forms no part of it, nor are the propositions which were made at the time, but not introduced into the written contract, to be taken into view in construing it.

Tayloe *v.* Riggs, 1 Pet. S. C. R., p. 591.

Parol testimony shall not be received to superadd a term or clause to a written agreement.

Morley *v.* Boothby, 3. Bingham, 11th vol. of E. Common L. R., p. 56.

If the contract in the end be reduced to writing, nothing which is not found in the writing can be considered as a part of the contract.

Kain *v.* Old, 2 Barn. &. Cress., 9 E. C. L. R., (Am. Ed.,) p. 208.

Where written instruments are appointed, either by the authority of law, (as in the present case, as concerning realty, and so required by statute to be in writing,) or by the compact of parties, to be the memorials of truth, it is matter both of principle and policy to exclude inferior evidence as a substitute for such instruments, or to alter them.

2 Stark. Ev., Tit. Parol Evidence, sec. 544, p. 543.

If the parties have contracted by deed, as the obligation under seal imports greater deliberation and more solemnity than a mere written agreement which is not under seal, no evidence, whether oral or written, which is not under seal, can be admitted to contradict or vary it.

2 Stark. Ev., p. 548.

Pitkin *v.* Brainerd, 5 Conn. R., 451.

Where the deed says it is in consideration of a particular thing, (or things,) it imports the whole consideration and negatives any other.

2 Stark. Ev., p. 549.

It is to be noted that four distinct considerations are stated in the indenture of mortgage in this case: (*a*) The indebtedness aforesaid. (*b*) To more perfectly secure payment thereof, according to the tenor of said note; and (*c*) in compliance with an agreement made between Blease and Garlington at the execution and delivery of said note, (*d*) and one dollar in hand paid. The consideration being thus specifically stated, it imports the whole consideration and negatives any other.

See Rich *v.* Jackson, 4 Bro. C. C., 519.

Evidence is inadmissible of a parol agreement prior to

or cotemporary with the written instrument, and which varies its terms as to show that a note made payable on a certain day was to be payable on a contingency only.

Rawson *v.* Walker, 1 Starkie's Cases, Eng. Com. Law Reps., 2d vol., 427.

Free *v.* Hawkins, 1 Moore, 28, Eng. Com. Law R., 4th vol., p. 31.

Woodbridge *v.* Spooner, 3 Barn. & Adol., Eng. Com. Law R., vol. 15, p. 268.

It is submitted that the evidence tendered to prove that the plaintiff below had to obtain a judgment against Stewart was properly rejected.

2. As to the proposition to prove the alleged representation of plaintiff below that the claim against Stewart was worth at least $6,000, embraced in numbers 2 and 3. Numbers 2 and 3 embrace but a single proposition, to wit:

That during the negotiations for the sale of the claim against Stewart, plaintiff below represented to defendant, Blease, that the claim *was worth* at least $6,000; that *it is not worth* $2,500; that defendant did not know the then financial condition of Stewart, and put implicit confidence in the representations of the plaintiff, and would not have made the trade but for such assurance.

It is proper to be noted that it was not proposed to prove that Garlington stood in any fiduciary relation to the dedefendant below, or that the defendant below had any special cause for relying on the representations of Garlington. In other words, there was no offer to prove any fact which would place Garlington in any other relation to him as purchaser of the claim than Garlington would have been in in regard to any other purchaser. Nor did the defendant offer to prove any fact which went to show that he placed a "known trust and confidence" in Garlington. Nor did he offer to prove that he did not have equal means of knowing the value of the claim as Garlington had.

Besides, it is important to observe that the very state of

facts which the defendant below offered to prove in regard to misrepresentation, if proved, did not establish misrepresentation. The offer was to prove that "the plaintiff represented to the defendant that said liability or claim *was worth* at least six thousand dollars, and that in fact *it is not* worth twenty-five hundred dollars." The alleged representation was made before the note and agreement were executed, April 20th, 1869. Then, in April, 1869, it is said the claim was worth $6,000. On December the 9th, 1873, four years and over seven months afterwards, it is said "*it is not worth* twenty-five hundred dollars." There was no offer to prove that at the time of the alleged representation, in April, 1869, the claim was not worth $6,000. The claim might well have been worth $6,000 in 1869, and only $2,500 December, 1873. The same causes which occasioned such ruinous depreciation in the values of property in Louisiana, operated with equal potency in South Carolina.

The defendant below simply offered to prove that Garlington represented the claim to be worth a certain sum in 1869, and that it was worth much less in 1873.

That might be admitted, and it did not prove fraud.

The court below therefore properly refused to allow proof of such representation, because the only ground on which such representation could be admitted, where the contract is in writing, is on the ground of fraud in making the contract.

But even if the defendant below had offered to prove that the claim was not worth $6,000 in April, 1869, it would have been insufficient to establish the charge of fraud. Such representation is not of a thing "in regard to which one party places a known trust and confidence in the other," and it was a mere matter of opinion, equally open to both parties for examination and inquiry, and where neither party is presumed to trust to the other.

Judge Story says:

"The misrepresentation must not only be in something material, but it must be in something in regard to which

the one party places a *known trust* and confidence in the other. It must not be a mere matter of opinion, equally open to both parties for examination and inquiry, and where neither party is presumed to trust to the other, but to rely on his own judgment. * * * Ordinarily, (where there is no 'peculiar relationship or confidence,') matters of opinion between parties dealing upon equal terms, though falsely stated, are not relieved against, because they are not presumed to mislead or influence the other, when each has equal means of information. Thus, a false opinion, expressed intentionally by the buyer to the seller of the value of the property offered for sale, where there is no special confidence or relation or influence between the parties, and each meets the other on equal grunds, relying on his own judgment, is not sufficient to avoid a contract of sale."

1 Story's Equity, sec. 197.

It is a striking fact that defendant below purchased as the friend of Stewart, against whom the claim was.

Now, the value of the claim depended on the ability of Stewart to pay. Upon this point, therefore, the defendant below had the means of superior knowledge to the plaintiff below.

"It is difficult to imagine that a general representation as to value, the truth of which the other party has an opportunity of ascertaining, can in law constitute fraud."

Chitty on Contracts, sec. 224, p. 223.

Simpson *v.* Wiggins, 3 Woodbury & M., 413.

It is clear, we submit, that in any aspect of the case the appellant has not been injured by the exclusion of the proposed evidence; and when such is the case, according to the familiar practice of this court, there is no ground for reversal of the decree below.

Blackburn *v.* Crawford, 3 Wallace, 175.

WILLIAM W. BOYCE,
Counsel for Appellee.